ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
KAREN BAKER, JUDGE

DIVISION I

CACR07-351

JOHNNY LEWIS YOUNG — JANUARY 23, 2008

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT
[NO. CR2006-231]

HONORABLE WILLARD PROCTOR JR., CIRCUIT JUDGE

AFFIRMED

A Pulaski County Circuit Court found appellant Johnny Lewis Young guilty of aggravated robbery, first-degree battery, theft of property, and being a felon in possession of a firearm. Appellant challenges his convictions alleging that the State failed to introduce substantial evidence of appellant's identity as the person who committed the offenses and that appellant directly or constructively possessed the pistol that was found in the back-seat floorboard of the automobile in which appellant was a back-seat passenger. We find no error and affirm.

When a defendant challenges the sufficiency of the evidence that led to a conviction, the evidence is viewed in the light most favorable to the State, and only the evidence supporting the verdict will be considered. *Loar v. State,* 368 Ark. 171, ___ S.W.3d ___ (2006). The appellate court will affirm a judgment of conviction if there is substantial evidence to support it. *Id.* Substantial evidence is evidence of sufficient force and character that it will, with reasonable certainty, compel

a conclusion one way or the other without resorting to speculation or conjecture. *Id.*

Guilt can be established without eyewitness testimony, and evidence of guilt is not less because it is circumstantial. *Lowe v. State*, 357 Ark. 501, 506, 182 S.W.3d 132, 135 (2004); *Gamble v. State,* 351 Ark. 541, 95 S.W.3d 755 (2003); *Gregory v. State,* 341 Ark. 243, 15 S.W.3d 690 (2000); *Trimble v. State,* 316 Ark. 161, 871 S.W.2d 562 (1994). Where circumstantial evidence alone is relied upon, it must exclude every other reasonable hypothesis, other than that of guilt of the accused, to be substantial. *Lowe, supra.* Direct evidence is evidence that proves a fact without resort to inference, when for example, it is proved by witnesses who testify as to what they saw, heard, or experienced. *Id*. Furthermore, direct evidence is evidence which, if believed, resolves the issue. *Id.* Our supreme court has held that it is within the province of the jury to accept or reject testimony as it sees fit. *Riggins v. State,* 317 Ark. 636, 882 S.W.2d 664 (1994).

The evidence in this case is both circumstantial and direct. The victim, Raymond Bennett, testified that two men approached him as he walked down Division Street late in the evening on November 25, 2005. One of the men touched Bennett's jacket and told him to "drop it off." Bennett asked, "Drop what off?" The man first reached for the jacket, then shots were fired. One man pulled the leather jacket off of the victim. The jacket contained Bennett's identification, cash, and his cellular phone. Bennett stated that he could not identify his attackers other than that they were both black males who appeared to be in their twenties. He was unable to identify appellant as one of his attackers at trial.

Lieutenant John Breckon testified that at about 10:50 p.m. while he was on patrol in the area, he received a call to respond to a report of shots fired near the 1400 Block of Division Street. As he headed to the scene, he observed a car matching the description of the suspect vehicle. Based upon the initial information he'd received over the radio, Breckon pulled the vehicle over. As he

made contact, he observed blood on the areas of the arm and wrist of the person sitting in the rear passenger seat directly behind the driver. That individual was later determined to be appellant. Based upon the speed of the driving, location and timing of the incident combined with the presence of blood, Breckon removed appellant from the vehicle. As appellant was stepping out, Breckon observed the gun and a box of ammunition, partially under the driver's seat in the floorboard, directly in front of where appellant's feet had been. In the vehicle, appellant had been seated on the jacket that contained Bennett's identification and cash. No other weapons were found in the vehicle. Breckon testified that appellant was twenty-nine years of age and the other suspected assailant was twenty-three. Both were black males. A third male was also in the vehicle. Breckon described this third male as intoxicated to the point of being unable to stand safely, falling at one point and requiring the officer to support him and help him to sit on the curb.

As appellant described the events, he witnessed Courtney, one of the men he was with, go into a house, then run out of the house saying he had been robbed, and then chase somebody down. Appellant began chasing Courtney and heard shots as he was running. He thought Courtney had been shot, but as he turned the corner, he saw it was Bennett who had been shot. Courtney was searching for his own money and Bennett told him to take his jacket. Appellant stated that while he could have left Bennett slumped and bleeding on the side of the house, he picked Bennett up and carried him to the front of the house "where someone could find him." Courtney was yelling at appellant to get into the car and appellant thought it was possible that he would get shot. They had only traveled two or three blocks before the police pulled them over. Appellant did not see any blood on his arm.

On appeal, appellant argues that the evidence was insufficient because Bennett could not identify appellant as one of the two men who robbed him and more than two males were in the

vehicle stopped by Breckon. He also asserts that no scientific or medical proof was offered to identify the blood on appellant as belonging to Bennett and that no proof was offered that appellant was in exclusive possession of the firearm or jacket.

Under the facts of this case, it would be reasonable for the fact-finder to conclude that the appellant removed the victim's jacket after he was shot, that the victim's blood was transferred to appellant's arm or arms as he was removing the jacket, and that appellant tossed the jacket onto the car seat before getting into the car to leave the scene. Both assailants participated in the aggravated robbery. Under the doctrine of accomplice liability, appellant was equally responsible for the crime whether or not appellant actually shot the victim. *Richmond v. State,* 302 Ark. 498, 791 S.W.2d 691 (1990). Accordingly, we find no merit to appellant's first argument.

Neither do we find merit to appellant's second argument. Arkansas Code Annotated section 5-73-103(a)(1) (Repl. 2005) provides that it is unlawful for a person convicted of a felony to possess or own any firearm. Appellant does not challenge his status as a convicted felon, and sufficient evidence was introduced to establish his previous felony convictions. He argues that he neither owned, nor was in control of, the vehicle. Appellant emphasizes that he was cooperative with the police and did not try to flee. While he acknowledges that he was in close proximity to the pistol as it lay on the floorboard in plain view, he asserts that his mere proximity to the contraband item did not prove that he constructively possessed it.

To sustain a conviction for possession of a firearm by certain persons, it is not necessary for the State to prove physical possession if the location of the contraband was such as it could be said to be under the dominion and control of the accused, that is, constructively possessed. *Loar v. State*, 368 Ark. 171, ___ S.W.3d ___ (2006). For constructive possession, the State must also prove that the accused knew the item possessed was contraband. *E.g.*, *Gamble v. State*, 82 Ark. App. 216, 105

S.W.3d 801 (2003). When Breckon stopped the suspected vehicle and removed appellant from the car, appellant initially blocked the officer's view of the gun in the floorboard. However, as appellant acknowledged, with appellant removed from the vehicle the gun and ammunition were in plain view. Breckon testified that it would have been difficult for anyone else in the car to reach the gun. Our supreme court has upheld a felon in possession conviction where the accused occupied the truck where a shotgun was located in plain view between the seats which made it immediately accessible to her and subject to her control. *Banks v. State*, 315 Ark. 666, 869 S.W.2d 700 (1994). Similarly, in this case it was reasonable for the fact finder to conclude that appellant had immediate access and control of the gun that was located at his feet.

Accordingly, we find no error and affirm.

PITTMAN, C.J., and GLADWIN, J., agree.